IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-12-2006

CORAM:

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl.O.P.Nos.18649 and 27007 of 2004 and 19467 of 2005
and
Crl.M.P.Nos.6361, 6362, 8482 of 2004 and 5661 of 2005

1.Prakash Chand
2.Gowtham Chand
3.Manju Chordia
4.Narendra Chand
5.Chandrakala
6.Subha Chordia
7.Prema Naresh .. Petitioners 1 to 7 in the above petitions.

Versus

M/s. Sri Meena Traders
rep. by its Partner Senthilkumar
rep. by Power Agent Shanmugam. .. Respondent in Crl.O.P.No.18649/04

M/s. Sri Meena Traders
rep. by its Partner Usha
rep. by Power Agent Shanmugam. .. Respondent in Crl.O.P.No.27007/04

M/s. Sri Meena Traders
rep. by its Partner Meena
rep. by Power Agent Shanmugam. .. Respondent in Crl.O.P.No.19467/05

Prayer: Petitions filed under Section 482 Cr.P.C seeking for a direction to call for the records in C.C.Nos.7873, 7876 and 7874 of 1999 respectively on the file of the II Metropolitan Magistrate, Egmore, Chennai and quash the same.

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For Petitioners : Mr. A.Raghunathan, S.C.

For Respondents : Mr.G.M.Syed Fasiuddin for M/s.A.Chandrasekaran

C O M M O N O R D E R

The petitioners are A-1 to A-7 in C.C.Nos.7873, 7876 and 7874 of 1999 respectively on the file of the II Metropolitan Magistrate, Egmore,

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Chennai. To quash the said proceedings, the above said criminal original petitions have been filed before this Honourbale Court.

2. A private complaint has been filed by the complainant/the respondent herein, which is a re-constituted firm. Originally, the name of the firm was 'Vel Murugan Constructions'. As per the allegations and averments made in the private complaint, A-8 is the daughter of one Jayalakshmi, who is the original owner of a property bearing Old No.36 and New No.1, Second Main Road, Raja Annamalaipuram, Chennai-600 028. She has borrowed Rs.75,000/- from the complainant during 1977, against the said property, by way of equitable mortgage. It has been stated that the value of the property is Rs.1,30,000/- at that time. A-8, on the strength of the Will, executed by her mother, executed a Power of Attorney to the second accused. It is alleged that the second accused executed 14 sale deeds to the other accused, viz., his family members. It is further alleged that such power of attorney and sale of the property to all the accused have been done with dishonest intention and when requested, though they have initially promised to re-convey the same, subsequently, refused to do so, resulting in the filing of the complaint.

3. The learned Senior Counsel appearing for the petitioners/A-1 to A-7 submits that on perusal of the allegations made in paragraph Nos.4 and 5 of the complaint, the dishonest intention, to substantiate the offence alleged, is not made out. Further, it is submitted that prima facie, it is a civil dispute. Civil cases are also pending in this regard. The present private complaint has been filed during September 1999 and it has been stated in Paragraph No.4 of the complaint that all the accused alleged to have played fraud to deceive the complainant. On perusal of the entire allegations and averments made in the private complaint, the allegation of dishonest intention is not made out and civil litigation has been given criminal colour and the private complaint has been taken on file.

4. Per contra, the learned counsel appearing for the respondent/complainant submits that documents have been forged and suppressing the fact of earlier transaction, all the accused conspired and committed the offence. Pendency of a civil suit will not stand in the way of the present private complaint and it is not a bar. On perusal of the private complaint as well as the sworn statement, prima facie materials are available to proceed against the accused and under such circumstances, the learned Magistrate has taken cognizance of the case and issued process to the accused. When there are valid materials available to proceed against the petitioners, invoking the inherent powers of this Court under Section 482 of the Cr.P.C. will be premature to adjudicate the issue. On perusal of the private complaint and the sworn statement, the dishonest intention is apparent. Creation of forged documents is also alleged. Under such circumstances, it will be premature to quash the proceedings before the commencement of the trial.

5. I have perused the materials available on record. On the face

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of the allegations and averments made in the complaint as well as the sworn statement, details have been given regarding the properties. Through the power given to the second accused, the property has been conveyed to the other accused. Power has been given by he 8th accused to the 2nd accused. The claim of the complainant is that by virtue of the earlier transaction, she is the owner of the property. The same has been suppressed, though the 8th accused was aware of the earlier transaction. Under such circumstances, I find, on going through the materials available on record, the allegations and averments made in the complaint and the sworn statement, prima facie materials are available to proceed against the petitioners/accused. I do not find any merit to quash the proceedings at the threshold. However, the petitioners are at liberty to agitate all the grounds before the trial Court at the time of trial. With the above observation, the criminal original petitions are closed. Consequently, connected Crl.M.Ps. are also closed. At this stage, the learned Senior Counsel for the petitioners submits that A-3, A-5, A-6 and A-7 are ladies and their presence during the course of the trial may be exempted. It has been repeatedly held by the Supreme Court that the presence of the accused could be exempted unless it is absolutely necessary for the purpose of the progress of the trial. Therefore, in the event of filing of such application for dispensing with their presence, the learned Magistrate may consider and pass orders in accordance with law.

bs/

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1) The II Metropolitan Magistrate, Egmore, Chennai.

Through' The Chief Metropolitan Magistrate, Chennai.

THREE CC TO MR.A. RAGHUNATHAN, ADVOCATE (SR NO 62452 & 62454)

ONE CC TO MR.A. CHANDRASEKARAN, ADVOCATE SR 61896

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rs(co)

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